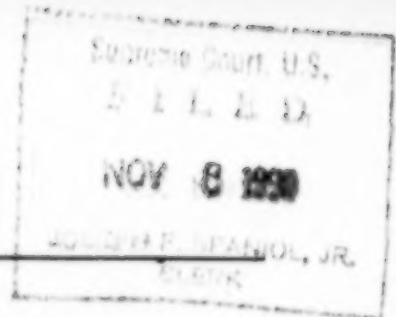


4
No. 89-1690



IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1990

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

CHARLES STEVEN ACEVEDO,

Respondent.

JOINT APPENDIX

JOHN K. VAN DE KAMP, Attorney General
of the State of California
RICHARD B. IGLEHART, Chief Assistant
Attorney General
HARLEY D. MAYFIELD, Assistant
Attorney General
ROBERT M. FOSTER, Supervising
Deputy Attorney General
110 West A Street, Suite 700
San Diego, California 92101
Telephone: (619) 237-7852
Attorney for Petitioner

FRED ANDERSON, Attorney at Law
1851 East 1st Street, Suite 1450
Santa Ana, California 92705
Telephone: (714) 835-4400
Attorney for Respondent

PETITION FOR CERTIORARI FILED
April 30, 1990
CERTIORARI GRANTED October 1, 1990

JOINT APPENDIX

Chronological List of Dates
on Pleadings Filed; Hearings
Held, and Orders Entered

JA-1

RELEVANT MATERIALS FROM
CLERK'S TRANSCRIPT

Information

JA-2

Points and Authorities

JA-4

Full Text of Search Warrant

JA-9

Denial of Motion
to Suppress Evidence

JA-20

Entry of Guilty Plea

JA-22

Sentencing

JA-25

RELEVANT MATERIALS FROM
REPORTER'S TRANSCRIPT

The Suppression Hearing

JA-29

JA-1

CHRONOLOGICAL LIST OF DATES ON
PLEADINGS FILED; VERDICTS AND
SENTENCE

SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY
OF ORANGE

People v. Charles Steven Acevedo
No. C-68857

DATE	PROCEEDINGS
06/24/88	Information Filed
10/07/88	Motion to Suppress Evidence Denied
10/12/88	Acevedo Pleads Guilty
10/12/88	Acevedo Sentenced; Probation Granted

[Clerk's Transcript p. 2]

Filed in open Superior Court of the State
of California, in and for the County of
Orange, on motion of the District Attorney
of said County, this 24th day of June,
1988.

GARY L. GRANVILLE, COUNTY CLERK

BY: /s/ Juliana M. Boyd Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE)
STATE OF CALIFORNIA,)
Plaintiff,)

vs.)

CASE NO.
C-68857

RICHARD BRIAN)
ST. GEORGE)
aka: Mark Brent Rich)
CHARLES STEVEN)
ACEVEDO)

INFORMATION

Defendant(s))

THE DISTRICT ATTORNEY OF ORANGE COUNTY
hereby accuses the aforementioned defendant(s)
of violating the law at and within the
County of Orange as follows:

COUNT I: On or about October 30, 1987,
RICHARD BRIAN ST. GEORGE and CHARLES

JA-3

STEVEN ACEVEDO, in violation of Section 11359 of the Health and Safety Code, a FELONY, did willfully and unlawfully have in his possession, for purpose of sale, marijuana.

Contrary to the form, force and effect of the Statute in such cases made and provided, and against the peace and dignity of the People of the State of California.

DATED: June 24, 1988

CECIL HICKS, DISTRICT ATTORNEY
COUNTY OF ORANGE
STATE OF CALIFORNIA

BY: /s/
Deputy District Attorney

/

/

/

/

/

/

/

JA-4

[Clerk's Transcript pp. 64-65]

CECIL HICKS,
DISTRICT ATTORNEY
COUNTY OF ORANGE,
STATE OF CALIFORNIA
MICHAEL R. CAPIZZI,
CHIEF ASSISTANT
DISTRICT ATTORNEY-
MAURICE L. EVANS,
ASSISTANT
DISTRICT ATTORNEY
THOMAS M. GOETHALS,
DEPUTY-IN-CHARGE
WRITS AND APPEALS SECTION

DEPT: 5
HG DATE: 9/30/88
EST TIME: 1 HR

BY: MICHAEL JACOBS
DEPUTY DISTRICT ATTORNEY

P.O. BOX 8089
SANTA ANA, CALIFORNIA 92702
TELEPHONE: (714) 834-3600

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE)	
STATE OF CALIFORNIA,)	CASE NO. C-68857
)	
Plaintiff,)	POINTS AND
)	AUTHORITIES IN
)	OPPOSITION TO
vs.)	DEFENDANT'S MOTION
)	TO SUPPRESS
)	(P.C.1538.5)
)	
)	(De Novo Testimony
CHARLES STEVEN)	Required)
ACEVEDO,)	
Defendant,)	

ANTICIPATED STATEMENT OF FACTS

On October 28, 1987 Investigator D. Coleman of the Santa Ana Police Department received a call from DEA agent John McCarthy in Hawaii informing him that a package addressed to J.R. Daza at 805 W. Stevens Avenue, Santa Ana, California 92704, had been seized by the authorities and found to contain contraband. The package was to be sent to the Federal Express Office at 700 W. Alton in Santa Ana. The package contained a picnic cooler containing nine clear bags of marijuana. This package was placed into the mail and shipped to Officer Coleman of the Santa Ana Police Department. On October 29th, Officer Coleman received the package, opened it to examine its contents, then readdressed it to J.R. Daza, 805 W. Stevens Avenue, Santa Ana, California 92704. It was then left at the

Federal Express Office in Santa Ana California.

At approximately 10:30 a.m. on October 30, 1987, J.R. Daza picked up the package and was then followed back to his residence at 807 W. Stevens #12, by Santa Ana police officers. He was observed to take the package inside at approximately 11 a.m. Officers Cousin and Andrade took a position of surveillance while Investigator Coleman left to obtain a search warrant. [At 11:45 a.m. surveilling officers saw Mr. Daza exit the residence and dropped the paper and box which had contained the cooler holding the marijuana into a trash bin. At that time Officer Coleman left the scene to obtain a search warrant.]^{1/}

Shortly thereafter, at 12:10 p.m., Defendant St. George, was observed by

1. These words were added by stipulation at the hearing on the motion to suppress. (See RT 2-5, JA 30-33.)

Officers Andrade and Cousin exiting the residence wearing a blue knapsack. The knapsack appeared to be half full. To prevent the possible loss of evidence while waiting for the search warrant, Defendant St. George was then stopped and detained by Officer Morehouse [after he left the complex].^{2/} Subsequently, St. George was arrested after the officers found approximately one and a half pounds of marijuana in his knapsack.

At approximately 12:30 p.m., Defendant Acevedo was observed to walk into apartment #12. He was not carrying any packages at that time. He exited 10 minutes later carrying a brown lunch bag that apperaed [sic] to be full. He was then observed to leave the apartment and walk to a silver Honda in the parking lot. He was observed to place the brown lunch

2. These words were added by stipulation at the hearing on the motion to suppress. (See RT 2-5, JA 30-33.)

bag inside the trunk of the vehicle before he attempted to leave. In order to prevent the possible loss of evidence from the apartment under surveillance, he was stopped by a marked police car.

Investigator Flores opened the [locked]^{3/} trunk of the vehicle, opened the brown bag, and found it to contain approximately 1/4 to 1/2 pound of marijuana.

At 12:40 p.m., a search warrant was served on the premises at 807 W. Stevens #12, Santa Ana. The items seized from the residence are itemized in the Return to Search Warrant which is attached hereto, along with the Search Warrant, and Affidavit, as "Exhibit A"

/

/

/

/

3. This word was added by stipulation at the hearing on the motion to suppress. (See RT 2-5, JA 38.)

[Clerk's Transcript p. 70-73]
EXHIBIT A
STATE OF CALIFORNIA - COUNTY OF ORANGE
SEARCH WARRANT AND AFFIDAVIT
(AFFIDAVIT)

/S/ DON COLEMAN, bewing sworn, says that
(Name of Affiant)

on the basis of the information contained
within this Search Warrant and Affidavit
and the attached and incorporated
Statement of Probable Cause, he/she has
probable cause to believe and does believe
that the property described below is
lawfully seizable pursuant to Penal Code
Section 1524, as indicated below, and is
now located at the locations set forth
below. Wherefore, affiant requests that
this Search Warrant be issued.

/S/ Don Coleman. NIGHT SEARCH REQUESTED:
(Signature of affiant)

YES [] NO[X]

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO
ANY SHERIFF, POLICEMAN OR PEACE OFFICER IN

THE COUNTY OF ORANGE proof by affidavit
having been made before me by DON COLEMAN,
(Name of Affiant)

that there is probable cause to believe
that the property described herein may be
found at the locations set forth herein
and that it is lawfully seizable pursuant
to Penal Code Section 1524 as indicated
below by "x"(s) in that it:

- ☐ was stolen or embezzled
- ☒ was used as the means of committing a
felony.
- ☒ is possessed by a person with the
intent to use it as means of
committing a public offense or is
possessed by another to whom he or
she may have delivered it for the
purpose of concealing it or
preventing its discovery
- ☒ tends to show that a felony has been
committed or that a particular person
has committed a felony

— tends to show that sexual exploitation of a child, in violation of P.C. Section 311.3 has occurred or is occurring:

YOU ARE THEREFORE COMMANDED TO SEARCH:

(premises, vehicles, persons)

PREMISES: 807 W. Stevens, Apt. #12, Santa

Ana, Orange County, California:

It is a two story apartment building with beige stucco and brown wood trim. The front door faces east with the number "12" attached to the front door. The numbers "807" are attached to the south side of the building.

VEHICLES: Black, Honda Civic, California license #GIH260.

PERSON(S): "John Doe", Male, Mexican, approx. 5'8", 140 lbs, brown hair.

If found at 807 W. Stevens, Apt. #12, Santa Ana, Calif.

FOR THE FOLLOWING PROPERTY:

Marijuana and items commonly associated with storage and use of marijuana consisting of sifters, baggies, scales and other weighing devices. Also, articles of personal property tending to establish the identity of persons in control of the premises consisting of utility receipts, rent receipts and cancelled mail envelopes. Also, records of narcotics transactions, telephone records, notes of monies paid and owed, quantities of marijuana ordered by purchasers and money received through narcotics sales including the following U.S. currency:

Also to answer, listen, record, monitor, note, converse with callers who appear to be calling in regards to drug sales on the telephone or answering machine or device to return any calls left on any answering machine or device, or any telephone beeper

or pager located within the location, with revealing officers' identity.

AND TO SEIZE IT IF FOUND and bring it forthwith before me, or this court, at the courthouse of this court. This Search Warrant and incorporated Affidavit was sworn to and subscribed before me this 30th day of October, 1987, at 12:40 p.m. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

/s/ Gary P. Ryan, NIGHT SERVICE

APPROVED: YES [] NO [X]

(Signature of Magistrate)

Judge of the Municipal Court, /s/

Judicial District

/

/

/

/

/

STATEMENT OF PROBABLE CAUSE

Your affiant says that the facts in support of the issuance of the Search Warrant are as follows: That you affiant is a sworn police officer and has been so employed for five (5) years.

That your affiant, while acting in said capacity, has received the following information: On 10-28-87, your affiant received a telephone call from D.E.A. Agent John McCarthy from Hawaii, phone number (808) 541-1936. He told your affiant he had seized a package containing a picnic cooler. This cooler contained nine clear bags of marijuana. These bags were approximately 12" x 4" x 3" each containing approximately two pounds of marijuana. McCarthy told your affiant this package was opened by him and he found the marijuana. The package was addressed to a J.R. Daza at 805 W. Stevens Avenue, Santa Ana, CA 92704 with a phone

number of (714) 641-3874. This package was to be sent to Federal Express at 700 E. Alton in Santa Ana. McCarthy told your affiant he would ship the marijuana to your affiant. Our intent was to arrest the person who picked up the marijuana.

On 10-29-87, your affiant received the package. Your affiant opened it and found it to contain the marijuana as McCarthy had told your affiant about. Your affiant repackaged the box and contacted Mike Cole the Senior Operations Manager at Federal Express. Your affiant told him your affiant wanted [sic] to leave the package and arrest the person who picked it up. He took the package and locked it in a room.

On 10-30-87, your affiant recontacted Mike Cole at the Federal Express. Your affiant examined the package containing the marijuana. It was still locked in the same room your affiant observed Cole lock

it in on 10-29-87. The package had not been tampered with. You affiant recognized the wrapping as the same wrapping your affiant wrapped the package in on 10-29-87. I also placed a very small mark on the wrapping and this mark was still there.

The telephone number was checked through Department resources and the number of 641-3874 came back to a Jaime R. Daza at 807 W. Stevens, #12, Santa Ana. A check of Jaime Daza's CDL found an address of 807 W. Stevens, #12. At approximately 1030 hours a subject who identified himself as Jaime Daza went to the front counter of the Federal Express and picked up the package. The suspect was approximately 5'8", 140 lbs., short brown hair wearing a long sleeve brown and white striped shirt and white pants. Your affiant observed this subject place the package containing the marijuana into the

rear of a black Honda Civic, license number 1GIH260. This subject was surveilled by the Santa Ana Narcotics Detail and the Santa Ana Career Criminal Unit to 807 W. Stevens, #12. Inv. Cousin then observed this subject remove the package from the vehicle and walk into apartment #12.

Your affiant's expertise consists of the following: Your affiant has been a sworn police officer for the last five years. Your affiant has worked as a Narcotics Investigator for the past one and one-half years. Your affiant has approximately 140 hours of school and training in packaging, sales, transportation and recognition of narcotics. Your affiant has qualified as an expert in the use of both heroin and cocaine in Municipal and Superior Courts in Orange County. Your affiant has made over 200 arrests for the use and influence

of cocaine and heroin. Your affiant has over 500 hours of surveillance experience and has purchased narcotics in an undercover capacity 15 times. Your affiant has made over 100 marijuana related arrests.

It is your affiant's expert opinion that this subject John Doe is in possession of this marijuana for the purpose of selling it. The size of the packages of the marijuana along with the large quantity, approximately 15 to 20 pounds, is consistent with the amount possessed for sales.

It has been your affiant's training and experience during the service of search warrants that we will find articles of personal property tending to establish the identity of persons in control of the premises consisting of receipts, rent receipts, cancelled mail envelopes, records of narcotic transactions,

JA-19

telephone records, notes of money owed,
quantities of heroin ordered by purchasers
and names of purchasers, any telephone
answering tapes or video cassette tapes.

/ / / approved: 10-30-87

/ / / /s/ David C. Velasquez DDA

/ / /

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

[Clerk's Transcript pp. 77]

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF ORANGE

JUDGE: Leonard H. McBride

CLERK: Sharon Kupka

DATE 10-7-88

BAILIFF: Ray Lewis

REPORTER: Ron Gerratsen

TIME: 9 a.m. DEPT: 44

C-68857 People vs Acevedo, Charles Steven

(x) Hrg re: [] Trial [] Prob.

Violation [] Stay of Exec.

[x] 995 PC Motion [x] 1538.5 PC

Motion

[] Other:

(x) Deft in court with csl Fred Anderson

.^{4/}

(x) Peo rep by Michael Jacobs Dep. D.A.

.

(x) Court read moving papers & opposition

& heard argument from counsel

People's P&A's modified by

4. Dots indicate deletion of
unused portions of trial court minute
order forms.

interlineation. Counsel stipulated as to certain facts of the case. Court finds the police had reasonable cause to detain & search vehicles without a search warrant.

(x) Motion by deft denied as to 995 PC & 1538.5 PC motions.

.

(x) 10-12-88 TD to remain

.

(x) Regarding the 995 PC Motion Court finds the police officer had sufficient knowledge of marijuana to determine that what he found on deft. was marijuana. Motion denied.

Ext. 10-7-88

/

/

/

/

/

/

[Clerk's Transcript pp. 78-79]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

MINUTE ORDER

Dept 5 convened at 9 a.m.

DATE 10-12-88

JUDGE: HONORABLE MYRON S. BROWN DEPUTY
CLERK: F. Ray
BAILIFF: G.S. Crandall
REPORTER: Kathy D. Hoffman

CASE: C-68857 PEOPLE VS. Acevedo, Charles
Steven

MATTER: Trial Chg of Plea P&S

(x) Deft. (x) In Court (x) With csl. Fred
W. Anderson

(x) Peo. Rep. by Nat Glover D.D.A.

.

(x) Deft. (x) Adv. of legal & const.
rights.

(x) Deft. Wvd. Stat. Time for ()
arraignment () trial (x) sent (x)
prob. report. (x) Info () Indict.

(x) Amend by adding count 2 sec.

11357(c) HS

(x) Deft. wvd. reading, defects &
advisement. (x) Amended information
to be filed.

.

(x) Court finds deft intell & voluntarily
waived legal & const rights to jury
trial, confront & examine witnesses
and to remain silent.

(x) Deft's written wvr. of legal and
const. rts. on (x) Guilty
() Nolo contender plea recv'd & ord
filed. Court finds fact. basis &
accepts plea. To (x) Amend () Compl
() Ind () Info deft. pleads (x)
Guilty () Nolo contendere to (x)
counts 1 and 21 [sic]

.

(x) Deft adv (x) Conseq of plea if not a
citizen (x) This constitutes a prior
conviction (-) Falls within

parameters of Proposition 8 (x)

Maximum exposure 3 years (x) conseq
of violating: (x) Prob () Parole

(x) Csl. joins in waivers and plea. ____

(x) Deft. () Applied () Wvd. prob. (x)
Req. imm. sent. () Prob. rep
ordered.

.

(x) Defendant advised if there are no
violations of law or probation for 1
year the Probation Department will be
relieved of supervision the remaining
two years

continued on page 2

/

/

/

/

/

/

/

/

JA-25

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

MINUTE ORDER

CASE: C-68857 PEOPLE VS. Acevedo, Charles
Steven PAGE 2

(x) No legal cause why judgment should
not be pronounced and deft. having
(x) pled (x) guilty () nolo
contendere to () been found guilty
of 11359 HS a (x) felony () misd. as
chgd. in ct. 1 and 11357(c) HS a ()
felony (x) misd. as chgd. in ct. 2.
Deft. sent to state prison for ()
low () Mid () Upper term of ____
years.

.

(x) Imp. of sent. susp. & Deft. placed on
prob. for 3 years. Under following
terms:

(x) Be confined in OCJ for 30 days

(x) Credit for time served of 2 actual 1
conduct, totaling 3 days.

- (x) Court orders stay of execution until
Friday 11-11-88 at 8 PM (see below)
.....
- (x) Pay restitution fine of \$100.00 ()
Purs 13976 GC () Fine stayed then
permanently stayed upon payment of
restitution
() Make full restitution in amount
determined by ____ through probation
office ____.
.....
- (x) Use no unauthorized drugs, narcotics
or controlled substances, submit to
drug or narcotic testing as directed
by P.O. or police officer ____
- (x) Submit your person, prop, including
residence, premises, containers or
vehicle under your control to search
and seizure at any time of the day or
night by any police or P.O. with or
without a warrant and with or without

reasonable cause or reasonable suspicion.

(x) Cooperate with P.O. in plan for . . .
Psychiatric (x) Drug . . .

(x) Register pursuant to () 290 PC (x)
11590 H&S () ____

(x) Seek training, schooling or
employment and maintain residence and
associations as approved by the
probation department. () ____

(x) Not own, use or possess any type of
dangerous or deadly weapon.

(x) Obey all laws, orders, rules and
regulations of the probation dept.,
court and jail. (x) Violate no law
() ____

.

(x) Pay lab analysis of \$40.00 as dir by
P.O.

(x) Deft accepts terms, cond of
probation. . . .

.

- (x) This minute order constitutes (x)
Probation order . . .
.
- (x) Temporary commitment order forwarded
to jail this date; remaining 27 days
to be served by reporting to jail by
8 PM Friday to be released by 8 AM
Monday commencing 11-11-88 and
following that schedule until
sentence has been served.

ENTERED: 10-12-88

/

/

/

/

/

/

/

/

/

/

/

[Reporter's Transcript pp. 2-5]

Santa Ana, California - Friday,

October 7, 1988

Morning session

(The following proceedings were had
in open court:)

THE COURT: People versus Richard
Brian St. George and Charles Steven
Acevedo.

MR. JACOBS: Mike Jacobs for the
People.

MR. ANDERSON: Fred Anderson for Mr.
Acevedo.

MR. LANDGREN: Todd Langren for Mr.
St. George [the co-defendant], who is
present.

THE COURT: I understand this is not
going to be a de novo hearing, we're going
to submit it on the basis of a
stipulation, are we?

MR. JACOBS: Yes, Your Honor. I've
submitted points and authorities and the

factual patterns are the same, but I have in front of me the motion on Richard Brian St. George, points and authorities --

THE COURT: Slow down. Who represents St. George?

MR. LANDGREN: I do, Your Honor.

THE COURT: His points and authorities, and we're going to assume --

MR. JACOBS: No, it's mine.

THE COURT: It's yours. I'll have to look at those carefully.

MR. JACOBS: Then there's one addition, Your Honor.

THE COURT: We're talking about what pages?

MR. JACOBS: Your Honor, the facts are on page 1 and 2. There's a correction on page 2, line 3, it should be apartment number 12.

THE COURT: Are we correcting that?

MR. JACOBS: From 3 to number 12.

THE COURT: I have 807 Stevens, #12.

MR. JACOBS: That's what it should read.

THE COURT: That's what mine reads.

MR. JACOBS: All right. Then at the end of the paragraph we're going to add one sentence. That sentence would be, "At 11:45 a.m. surveilling officers saw Mr. Daza exit the residence and dropped the paper and box which had contained the cooler holding the marijuana into a trash bin."

THE COURT: Okay.

MR. JACOBS: One more sentence, Your Honor: "At that time Officer Coleman left the scene to obtain a search warrant."

THE COURT: I've written those two sentences into the presentation of facts as contained in your brief.

MR. LANDGREN: There should be some additional changes I'd like to go over with the court, with Mr. Jacobs' approval.

On line 11 of that second page of the statement of facts there's a conclusionary statement. If I may have just a moment with counsel I won't clutter up the record.

Your Honor, one [sic] line 13, the second page after the word "Morehouse," we should insert the words -- it says "stopped and detained by Officer Morehouse."

THE COURT: That's line 12 on mine.

MR. LANDGREN: Okay, I'm sorry.

After "Morehouse," it should be after he went to the complex should be substituted for the words "as he attempted to drive out of the complex."

THE COURT: That's what mine says.

MR. LANDGREN: Your's says, "as he attempted to drive out of the complex."

THE COURT: Yes. "Then stopped and detained by Officer Morehouse as he attempted to drive out of the complex."

[Reporter's Transcript pp. 9-10]

THE COURT: I'm having a little trouble determining exactly what the facts are from this statement. Let's clarify what we have so we're predicating our decision on the stipulation.

We're talking about at page 2 defendant St. George was observed by Officer Andrade and Cousins exiting the residence wearing a blue knapsack. Doesn't say how they got into the knapsack. Just says he was arrested after the officers found --

MR. JACOBS: The last sentence says after he was taken into custody they searched the knapsack.

THE COURT: Said he was arrested after the officers found approximately one and a half pounds of marijuana in the knapsack. So apparently by implication there was a search of the knapsack and then an arrest. Doesn't say that here.

[Reporter's Transcript pp. 19-20]

[MR. LANDGREN:] The court has before it attached to the points and authorities, I believe the court has the search warrant. Did we include that in our motion?

MR. JACOBS: Yes.

MR. LANDGREN: If the court would take note of the motion.

THE COURT: That includes the affidavit for everything in the search warrant?

MR. LANDGREN: Yes, sir.

THE COURT: Mr. Anderson, are you stipulating that can be considered by the court as as factual presentation?

MR. ANDERSON: May I have just a moment, Your Honor?

Yes, I'll stipulate to that.

THE COURT: All right.

MR. JACOBS: That's fine, Your Honor.

THE COURT: Okay.

[Reporter's Transcript pp. 22-23]

MR. ANDERSON: May I insert a couple items in the statement of facts?

THE COURT: If you want to, but I wish we'd get all this together.

MR. ANDERSON: I understand, Your Honor. At line 19 --

THE COURT: Page 2?

MR. ANDERSON: On page 2 where it says "silver Honda," but not the same Honda as the search warrant. The search warrant Honda is a black Honda. This is a silver Honda.

THE COURT: Mr. Jacobs said they can detain these people if they have probable cause to detain them, and then if they learn something during the course of the search they can amplify the request for the warrant and search these people because of the information they received in the house. That would mean that it doesn't have to be named in the search

warrant on his doctrine of inevitable discovery. The question is, does the doctrine go that far? He said yes, it does. And neither one of you have responded to that.

MR. ANDERSON: Can I finish amending the facts?

THE COURT: Sure. You don't have to amend them, just stipulate that silver Honda here was not named in the search warrant.

MR. JACOBS: Why don't we stipulate the trunk was locked.

MR. ANDERSON: The trunk was locked and when they affected the stop my client's car was driving down a public street having left the area.

/

/

/

/

/

[Reporter's Transcript pp. 25-26]

THE COURT: Everybody is all through?

We don't have innocent behavior to start with. We have illegal behavior to start with. We have marijuana, which is a bulks [sic] substance, we have a delivery to a house, which must be the house wherein illegal activity takes place and distribution therefrom must take place or reasonably could take place. We have two people leaving the house with things convenient for the purpose of carrying marijuana, and certainly the police had reasonable and probable cause to detain them. Then we have the car situation, which gives rise to search greater leeway when it's involving a car, and the stipulated facts include the fact that both these cars were in motion when they were stopped.

You could say well, the police let them get in motion so they could stop them

and use the broader spectrum that's involved with a car than it would if they were just walking down the street. And I don't know of any case that says they can't do that. It's like the old cases where they used to wait until the guy went in his house and arrest them in there so they could search the house. That was ruled out in Chimel, I don't know of any case that applies to cars. So they're in a car, they have reasonable cause to believe there's narcotics in the car, they stop it. You've got a car stop. And you have exigent circumstances under the cases. And I think they had reasonable cause under the cases, which you don't necessarily agree with, to search the cars without a search warrant, which they did, and obtained the narcotics.

I don't agree with Mr. Jacobs that inevitable discovery would apply in this case. But irrespective of that, I feel

JA-41

they could have got a search warrant. But I don't think they had one and to search these two items, but I do find that the car stop search was legal and your motion under 1538 is denied.

.....

AFFIDAVIT OF SERVICE BY MAIL

Attorney:

No: 89-1690
October Term, 1990

JOHN K. VAN DE KAMP
Attorney General of
the State of California

STATE OF CALIFORNIA

Deputy Attorney General

Petitioner,

v.

110 West A Street, Suite 700
San Diego, California 92101

CHARLES STEVEN ACEVEDO

Respondent.

I, THE UNDERSIGNED, say: I am a citizen of the United States, am 18 years of age or over, employed in the County of San Diego in which County the below stated mailing occurred, and not a party to the subject cause, my business address being 110 West A Street, Suite 700, San Diego, California 92101.

I have served the within JOINT APPENDIX as follows: To Joseph F. Spaniol, Clerk, Supreme Court of the United States, 1 First Street, NE, Washington, D.C. 20543, an original and 40 copies, of which a true and correct copy of the document filed in this cause is hereunto affixed; AND, by placing one copy in a separate envelope addressed for and to each addressee named as follows:

Fred Anderson
1851 East 1st Street,
Suite 1450
Santa Ana, CA 92705

Office of the Clerk
Supreme Court of California
4250 State Building
San Francisco, CA 94102

Clerk of the Superior Court
700 Civic Center Drive West
Santa ana, CA 92701

District Attorney of
Orange Country
P.O. Box 808
Santa Ana, CA 92701

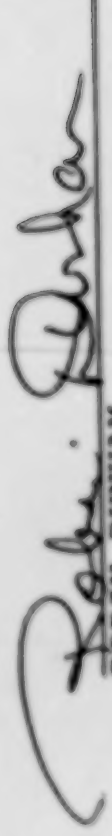
Court of Appeal
Fourth Appellate District
Division Three
925 No. Spurgon
Santa Ana, CA 92702

Each envelope was then sealed and with the postage prepaid deposited in the United States mail by me at San Diego, California, on the 8th day of November, 1990.

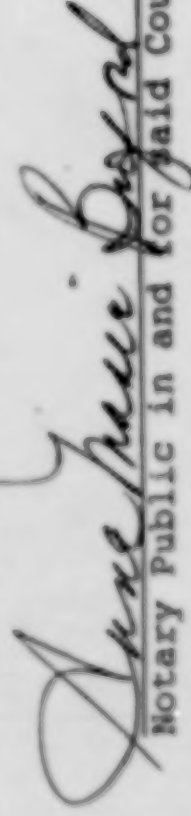
There is a delivery service by United States Mail at each place so addressed or regular communication by United States Mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, November 8, 1990.


ROBIN DUNHAM

Subscribed and sworn to before me
this 8th day of November, 1990.


Notary Public in and for said County and State

